services. [42] Time Warner attempts to distinguish this case on the grounds that the rule was intended to protect a new service at the beginning stages of development.[43] This is precisely the case with new DTV stations. The FCC and Congress have a vested interest in protecting the roll out of the new digital television service. Absent carriage and channel positioning protection for the new DTV service, retention of the cable/television cross-ownership rule is reasonable.

Second, there is little or no guarantee that the present must-carry rules will exist in perpetuity. The cable industry spent millions of dollars challenging the rules in court and always may seek some form of legislative change in the future. If the cable/television cross-ownership rule is eliminated and must-carry protections are subsequently relaxed, no protection would remain for local stations. Yet, we doubt the government would move to force the divestiture of television/cable combinations if must-carry rules were eliminated at some time in the future.

Apart from must-carry concerns, the FCC should recognize the unique relationship cable has with local television stations. The 1992 Cable Act gave local television stations the right to opt for either must-carry or retransmission consent. A commonly owned broadcast/cable combination in a local market could dramatically distort the competitive relationships in these markets.[44] For example, such a system could give its owned station more favorable terms for

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[42]Comments of Time Warner Cable at 25 citing *Melcher v. FCC*, 134 F.3d 1143 (D.C. Cir 1998).

[43]*Id.* at 25.

[44]*See* Comments of Network Affiliated Station Alliance (NASA) at 18.

retransmission consent, while at the same time discriminating against competitors. Such activity would not only affect broadcast/cable competition, but also jeopardize broadcast to broadcast competition.[45]

Finally, the FCC must address the potential for affiliate by-pass. To the extent the FCC believes there should continue to be a free, advertiser-based, over-the-air service, it must examine the problems created in the program supply market by eliminating the cable/broadcast cross-ownership rule. Affiliate by-pass has become a critical issue. Recent discussions over continued exclusivity and payments for major sports packages have dramatically altered the network-affiliate relationship. Eliminating the cable/broadcast cross-ownership rule could increase the incentives to by-pass the free, over-the-air television system. [46]

III. The Newspaper/Broadcast Cross-Ownership Rule Should be Eliminated

The overwhelming majority of comments filed in this proceeding support elimination of this rule.[47] In 1975, the FCC itself found that commonly owned newspaper/broadcast facilities

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[45]Again the issue here is not that cable can act as gate keeper. Such combinations create unique problems. The monopoly gatekeeper issue does not arise in the context of local newspaper/broadcast combinations or with the ownership of multiple television stations in the same market. Unlike the broadcast/cable situation, these combinations cannot prevent a competitor from being seen in the marketplace. They have no ability to control and limit the signals of competing stations.

[46]*See* NASA Comments at 21.

[47]See e.g. Comments of Tribune Company, Comments of the National Association of Broadcasters, Comments of the Newspaper Association of America, Comments of Gannett Co,

demonstrated a superior record of public service. Despite any evidence of harm to the public, the FCC enacted the rule in the "hopes" of improving diversity. The logic was 51 voices are better than 50. The comments in this proceeding clearly demonstrate that the FCC's rationale is inapplicable in today's marketplace. To the contrary, retaining the rule harms diversity and competition in local markets.

In this regard, the FCC's diversity concerns cannot simply rest on the concept that different owners are better *per se.* The only legitimate justification is that the diversity of ownership somehow translates into diverse programming or expression. In short, there must be a nexus between diverse ownership and diverse opinion. Absent such a nexus, the FCC's ownership rules lose their unique justification.

Supporters of the newspaper/broadcast cross-ownership ban automatically presume that independent ownership will always yield a new voice. Conversely, they presume that common ownership will always reduce an independent voice in the market. Neither assumption is correct.

First, the FCC cannot simply presume that independent ownership will lead to an independent voice. Economic factors must be considered. Pursuing the goal of pure independent ownership has actually reduced voices by creating economic conditions that lead to sub-optimum

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Inc, Comments of A.H. Belo Corporation, Comments of Hearst-Argyle Television, Inc., Comments of the Hearst Corporation, Joint Comments of Cox Broadcasting and Media General, Comments of the Media Institute, Comments of the Media Institute, Comments of Lee Enterprises, Incorporated, Affidavit of Gregory Sidak.

performance by either the newspaper or the television station. Moreover, it has prevented new economic combinations that could add new voices to the marketplace.

This should be no surprise to the Commission. Historically, the efficiencies associated with newspaper/broadcast combinations have helped keep local daily newspapers in business. Indeed, it has been argued that the FCC's newspaper cross-ownership rule has hurt diversity by harming the economic base of newspapers in several markets. This fact was finally recognized by the FCC when it granted the waiver for News Corp to purchase the *New York Post*.

Evidence submitted in this proceeding documents the economic synergies that are present with cross-owned combinations. The efficiencies associated with these outright ownership combinations far exceed those which are possible through joint ventures.[48] As a result, common ownership has promoted new media voices which otherwise might not exist. Common ownership, therefore, fosters diversity by creating incentives to create new media.[49]

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[48]*See* Besen, Stanley and Daniel P. O'Brien, *An Economic Analysis of the Efficiency Benefits from Newspaper Broadcast Station Cross-Ownership*, filed in Comments of Gannett Co., Inc., July 21, 1998, Appendix B at 15; Bond & Pecaro, *A Study to Determine Certain Economic Implications of Broadcast/Newspaper Cross-Ownership,* filed in Comments of the National Association of Broadcasters, July 21, 1998 at Appendix B.

[49]*See e.g.,* Comments of Gannett Co., Inc., at 27.

Second, the record confirms that common ownership of newspapers and broadcast facilities will yield superior broadcast service. As in 1975, the existing commonly-owned newspaper/broadcast stations provide superior performance.[50]

Third, economic models presented in this proceeding demonstrate that commonly-owned facilities have economic incentives to expand the scope of the information that is provided and attempt to reach narrower, more discrete audiences.

> Further the FCC has observed that even "where one party owned all the stations in a market, its strategy would likely be to put on a sufficiently varied programming menu in each time slot to appeal to all substantial interests." (Citation omitted) Thus, while individual owners tend to compete for the same, most lucrative segment of a market, a common owner of multiple media sources in a particular market will often have a greater incentive to diversify its offerings in order to attract the greatest market share. [51]

In short, common ownership creates economic incentives to provide information for a more diverse audience. Independent ownership tends to facilitate lowest common denominator programs.

Fourth, opponents of the newspaper/broadcast combinations incorrectly presume that commonly-owned facilities will speak with one voice. Even the Supreme Court did not find, in

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[50]See *e.g.*, Comments of A.H. Belo, in MM Docket No. 98-35, July 21, 1998, Appendix A (non-entertainment programming study)

[51]*Id.* at 9.

1975, that newspaper/broadcast combinations necessarily "spea[k] with one voice."[52] The fear of monolithic viewpoints from these combinations is unfounded and has been rebutted by specific evidence in this record. Comments filed by A.H. Belo concluded:

> Thus, economic forces further drive newspapers and broadcast stations to maintain separate editorial voices. The efficacy of these journalistic traditions and economic incentives is well-illustrated by the highly independent editorial operations of WFAA-TV and the Dallas Morning News. Although the two entities share resources such as the above described news bureau, they operate as separate businesses, and there is no ongoing editorial coordination between the newspaper and the television station.[53]

Media Executive Richard A. Mallery, V.P. of Gannett, described the "real world" relationship between the editorial functions of newspapers and television stations:

> In my 22 years of employment in the news operations of two of the Nation's leading newspaper-broadcast companies, I have concluded that the opportunities for coalescing functional news and editorial operations of the two media are in fact extremely limited, largely because of the kinds of people these media seek to employ. Good independent-minded journalists, who are always in great demand, reject a centralized form of operation that requires them to hew to some corporate news or editorial line.[54]

This appears a common thread throughout the industry. An analysis performed by the Newspaper Association of America concluded:

> In summary, the survey responses confirmed that cross-owned paper and broadcast outlets typically do not merge their operations or even share substantial

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[52]*NCCB,* 436 U.S. at 786, citing Second Report and Order, 50 FCC 2d at 1085, 1089)

[53]*Id.* at 22.

[54]Statement of Richard Mallery, in Comments of Gannett Co., Inc., July 21, 1998, Appendix A at 3.

journalistic resources; when they do they typically produce output that otherwise would have been unavailable, rather than merely re-using pre-existing material.[55]

Finally, parties seeking to retain the newspaper/broadcast cross-ownership rule proffer several "examples" purportedly illustrating the need for separate ownership. These examples demonstrate precisely the opposite. Not one of the examples cited by CME or the Office of Communication, United Church of Christ (UCC) concern the newspaper/broadcast cross-ownership rule. After decades of newspaper/broadcast cross-ownership combinations in a variety of markets, no examples could be found. Nonetheless, proponents of the rule proffer several "examples."

- Donald Wildman's founding of American Family Radio does not concern either newspapers or television stations. No evidence is presented that Mr. Wildman dominates his markets or manipulates newscasts. If CME is correct, this appears to be a new diverse, *albeit* conservative, voice in the marketplace.

- CME uses News Corp's desire to have the Fox News Channel compete with CNN as another example. To the contrary, this desire would seem to support the notion that there are diverse, competitive news sources in the marketplace. Interestingly enough, this battle between so-called liberal and conservative news titans is taking place in cable.

- News Corp's removal of the BBC news channel from Star TV. News Corp reportedly capitulated to the Chinese government's demands. Non-News Corp British press reported the "capitulation." Apparently this shows that even the British press is alive and competitive. This has nothing to do with the dissemination of information in the United States. Assuming the claim is true, it shows that even News Corp is not immune from pressure brought by the largest totalitarian government on the face of the earth. We are not sure this has any relevance whatsoever to newspaper/broadcast cross-ownership rules or the United States.

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[55]Statement of E. Molly Leahy, Legislative Counsel NAA, cited Comments of the Newspaper Association of America, Appendix A at 4.

- CME referenced NBC's coverage of issues affecting General Electric. According to CME, NBC instructed then network head Larry Grossman not to use the words "Black Monday" to describe the 1987 stock market crash. Unfortunately, there is no evidence to suggest that NBC did not use the term Black Monday in its newscasts. Moreover, CME's claim that NBC's *Today Show* failed to report on a boycott involving GE is unsubstantiated. Moreover, the referencing source mentioned that then NBC President Mike Gartner denied claims that GE Chief Jack Welch tried to influence the news when Gartner was on the job. Whatever the truth of this claim, it has no bearing on the newspaper/ broadcast cross-ownership rule.

- CME takes *TV Guide* to task for an article on *The Simpsons,* alleging that this was done to improve ratings. *The Simpsons* is one of the most popular and highly rated television shows ever to be broadcast on television. It is certainly one of the longest running shows. One would expect specific evidence proving the *TV Guide* story was designed to boost ratings. None is provided.

- Joel Siegel of *Good Morning America* is apparently taken to task for his review of News Corp's *Anastasia.* CME tries to imply that Mr. Siegel's review was somehow biased stating "Similarly, on ABC/Disney program *Good Morning America*, a movie review of News Corp's *Anastasia* emphasized that the movie did not compare to the animation movies created by Disney." The implication of this statement is outrageous. There is absolutely no proof that Mr. Siegel's review of the movie *Anastasia* was in any way influenced by Disney. CME assumes Mr. Siegel lacks journalistic integrity, a fact simply not proven.

- UCC references the *Cincinnati Enquirer's* coverage of Chiquita Banana's business practices. Again, this has nothing to do with abuses arising from a commonly-owned newspaper/broadcast facility. Rather the case involved questions about how the reporter acquired information.

Thus, after decades of grandfathered newspaper/broadcast combinations in a variety of markets, there is absolutely no evidence to demonstrate that these combinations somehow tried to manipulate the news, distort the facts or dominate the marketplace of ideas in these markets.

There is no evidence of newspaper/broadcast cross-ownership abuse. The examples provided are unsubstantiated, personal views that have nothing to do with the rule in question.[56]

Those seeking to retain the newspaper cross-ownership rule appear to forget one important point. Whether it is a newspaper reporter, newsroom editor, or broadcast journalist, the professional ethics of journalists will help insure that accurate, truthful information is disseminated to the American people. The real concern does not appear to be common ownership *per se*, but rather the theoretical influence that ownership could conceivably have on the dissemination of information.

As documented by several commenters in this proceeding, ownership does not interfere with the journalistic efforts of its reporters and editors. Such meddling would not only run afoul of every journalistic principle, but would simply be bad business. Both newspaper and broadcast journalists have a long, rich history of accurately disseminating news and information to the public. To the extent ownership pressure exists, it exists today. Combining a local newspaper and television station would not increase the pressure on the news journalists working at either

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[56]In its Comments, CME references EXTRA which is the bi-monthly Magazine of FAIR (Fairness & Accuracy in Reporting). FAIR is a "national media watch group" whose ultimate goal is detailed on their Web site:

> Ultimately FAIR believes that structural reform is needed to break up the dominant media conglomerates, establish independent public broadcasting and promote strong, non-profit alternative sources of information.

FAIR/http://www.fair.org/ (August 3, 1998) the newspaper or the television stations. To the contrary, ALTV believes that journalists will continue to do their job, regardless of the owner and regardless of whether they are part of some form of combined operation.

The record in this proceeding makes it clear that there is little or no economic incentive for a newspaper and a television station to espouse monolithic viewpoints. To the contrary, there are numerous examples where the grandfathered commonly owned newspaper and broadcast outlets have taken separate positions on the same issue.

Assuming *arguendo* that a commonly-owned newspaper and broadcast outlet took the same editorial positions, the issue becomes whether the combination can effectively monopolize the marketplace of ideas. Overwhelming evidence in the proceeding demonstrates that in most markets no such power exists.

Without belaboring the point, there are numerous outlets available to compete including radio, television, cable networks, magazines, DBS, MMDS, SMATV, weekly newspapers, suburban newspapers and finally the Internet. All of these outlets have grown exponentially since 1975. The Comments present overwhelming data illustrating the growth in media markets over the past few decades.[57] The concerns over broadcast spectrum scarcity and the potential to dominate the marketplace of ideas simply does not exist today.

The Internet, by itself, renders the rule obsolete. Every individual in the world today has the ability to transmit a video or graphics message to the entire planet. The reach of the Internet goes beyond the market of a local newspaper or the protected contours of a broadcast facility. There is simply no scarcity of voices in the video marketplace or, more generally, the marketplace of ideas.[58]

This evidence of market growth has not been rebutted by supporters of the rule. Two arguments are presented. First, the new technologies do not have the same universal coverage as broadcasting. Second, the new services are "pay" services and a significant portion of Americans cannot afford these services.

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[57]*See e.g.*, Comments of Tribune Company at 22 (documenting the tremendous number of outlets in Chicago and South Florida); Comments of the Newspaper Association of America at 31 - 41 (documenting overall growth in media voices); Mark Fratrik, *Media Outlets By market - Update*, Comments of NAB at Appendix A (documenting tremendous media growth in all markets).

[58]The most persuasive evidence for the Internet's power in the marketplace of ideas comes from CME comments. Throughout the comments CME references Internet sites to support its position on various issues. *See e.g.,* CME Comments at page 4 note 9, page 5 note 11, page 7 note 18, page 10 note 34, page 11 note 38, at page 17 note 61, page 22 note 82., page 26 note 101. For example, one of the web sites referenced is a " national media watchdog group" called FAIR (Fairness & Accuracy in Reporting) that "offers well documented criticism of media bias and censorship." *See* FAIR http//www.fair.org/. While we may disagree with the opinions expressed by F.A.I.R over its web site or in its monthly magazine EXTRA, its very existence demonstrates that the marketplace of ideas is open and robust. With the Internet, there concepts of scare media voices are no longer justified.

As for universal coverage, there is no question that the new media compete directly with local television and newspapers. The evidence is not controverted. Every day advertisers make economic decisions to purchase time or column space in a variety of competitive media. Whether it's radio, newspaper, television cable or satellite services, these media are competitive substitutes. As ALTV's comments demonstrated, the combined audience shares of cable networks is comparable to the combined audience share of the big three networks. These alternative media have impact. And from a diversity standpoint they are comparable and substitutable.

As for economics, whatever problems exist for those who cannot afford pay video services, they are exacerbated by the newspaper/ broadcast cross-ownership rule. The rule forces newspapers, which have a tremendous investment in local news and information gathering, to seek investment in non-broadcast services. Thus, to harness economic efficiencies in local information markets, newspapers are forced to invest in media other than free, over-the-air television. In other words, if a local newspaper wants to provide a new video media information service directly to the public, it is forced to create a new local cable channel or Internet service. Under the rule, it is illegal for the newspaper to purchase a television station and disseminate information to its community -- for free. If the government is truly concerned about information "haves" and "have nots" in our society, it should eliminate the newspaper/television cross-ownership rules.[59] The rule is at best counterproductive. In the end it deprives those who cannot afford pay services of a potentially valuable information source.

Finally, retention of the rule makes little sense given the FCC's approach to diversity in other proceedings. On the one hand, the FCC has tentatively concluded that newspapers are not diversity substitutes for local broadcast television stations. If they are not diversity substitutes, then there is little justification for the existing rule. The Commission's highly arbitrary position cannot be supported in law.[60]

As many of the comments observed, the newspaper/television cross-ownership rule can no longer be justified. The legal justification for the rule, "scarcity of voices," has been obviated by technology and the hands of time. The Commission can no longer cling to *Red Lion* as the justification for this rule.[61] ALTV believes the rule should be abolished. In the alternative, the Commission, at the very least, should adopt a liberal waiver process.[62] This is especially the case for situations involving suburban newspapers.

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[59]The reverse is equally damaging to the public. A local television station owner that wants to use its news department more efficiently is prohibited from starting a newspaper in its own community.

[60]The FCC faces a significant contradiction in its regulatory approach. In other proceedings, the FCC has refused to count newspapers as being in the same market for diversity as local television stations. If this is correct, then there is no reason for the current newspaper/television cross ownership rule. *See* ALTV Comments at 34 to 36.

[61]*See, e.g.*, Comments of Tribune Company at 14 (challenging the continued relevance of Red Lion and the constitutionality of the newspaper/television cross-ownership rule.)

[62]*Id.* at 51

IV. The Local Television Duopoly Rule Should Be Relaxed

In its *Notice*, the Commission stated that the local television ownership rules would not be considered as part of this proceeding. Nevertheless, some commenters have filed urging the FCC to retain its existing local television duopoly rules.

ALTV's position on the FCC's local television ownership rules is well known.[63] In MM Docket No. 91-221, we have filed several sets of comments urging the FCC to:

- Relax the television duopoly rule to permit UHF/UHF and UHF/VHF combinations in local television markets.
- Permanently grandfather existing LMA combinations. This includes making such agreements fully transferable and renewable.

To the extent the FCC may ultimately decide to address its television duopoly rule and LMA policy in this proceeding, we hereby incorporate our filings in MM Docket Nol 91-221 into this proceeding. In addition, since filing our comments, ALTV analyzed the television industry's responses to the FCC *Public Notice* concerning local marketing agreements.[64] Accordingly, we are attaching this analysis as Exhibit A to these Reply Comments.

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[63]See Comments of ALTV in MM Docket Nos. 91-221& 87-81 (February 1997); Reply Comments in MM Docket No. 91-221& 87-81 (March 21, 1997)

[64]*See* ALTV, "Local Marketing Agreements and the Public Interest: A Supplemental Report," May 1998

Respectfully Submitted

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August 21, 1998

Appendix
A

Local Marketing Agreements and the Public Interest: A Supplemental Report

MM Docket No. 91-221

Prepared by the

Association of Local Television Stations, Inc.
&
Local Station Ownership Coalition

May, 1998

In addition to the duopoly rule, I am also pleased to see that this conference report grandfathers local marketing agreements, or LMA's. Many local broadcasters have stayed competitive by entering into these LMA's with one another. These innovative joint ventures allow separately owned stations to function cooperatively, achieving economies of scale through combined sales and advertising efforts, and shared technical facilities. These local marketing agreements have served their communities in a number of ways: some have increased coverage of local news; others have increase coverage of local sports, particularly college sports; and, many LMA's have provided outlets for innovative local programming and children's programming.

The Honorable .Wendell H. Ford
United States Senate
February 1996

The 1996 Act clearly reflects a Congressional determination that existing local marketing agreements ("LMAs") are in the public interest. Congress based its determination on evidence that these combinations, through the investment of hundreds of millions of dollars, have promoted both competition and diversity in many local markets. LMAs have been responsible for putting many new stations on the air, for transforming failing stations into viable competitors, and for giving under performing station the capability to reach many more households. The public benefits resulting from LMAs include vastly improved local news, sports, children's and public affairs programming.

Based on this evidence, Congress explicitly accorded special treatment to LMA's in Section 202(g) of the 1996 Act... In the legislative history of Section 202(g), the Conference Committee noted the benefits of these agreements and expressed its clear intent to grandfather existing LMAs.

The Honorable John Dingell
U.S. House of Representatives
June 3, 1997

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Local Marketing Agreements and the Public Interest: A Supplemental Report

I. Introduction

The following *Supplemental Report* updates an analysis filed previously with the FCC by the Association of Local Television Stations (ALTV) and the Local Station Operators Coalition (LSOC).[1] In our initial report, ALTV surveyed approximately 60 known local marketing agreement combinations (LMAs). In March of 1997, we provided the Commission with a case study analyzing the performance of 33 local marketing agreements.

On June 17, 1997, the FCC issued a *Public Notice* requesting information from licensees involved with local marketing agreements. The Commission asked a variety of questions regarding each LMA, such as the time and duration of the agreements, affiliation, signal overlap, renewal provisions, etc. In addition, the *Public Notice* asked stations to summarize the public interest benefits of the station.

A. Executive Summary of Results

This analysis is based on the responses to the FCC's *Public Notice*. Unfortunately, the FCC's public interest question was not as specific as ALTV's earlier survey. The responses provided by stations, however, confirm our previous analysis. Existing local marketing agreements have clearly benefitted the public interest by providing higher quality free over-the-air television services in their respective markets.

- LMAs exist in large, medium and small television markets. LMAs have been extremely important in increasing the number of competitive voices in local markets, especially in medium and small markets.

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[1] *See Local Marketing Agreements and the Public Interest*, filed in Reply Comments of the Association of Local Television Stations, in MM Docket No. 91-221 (March 1997).

- LMAs provide the necessary financial resources to commence new television operations and to rescue financially distressed stations. Absent this financial investment, service would decline in many markets.

- LMAs generally do not involve duplicate programming. Duplication exists only in cases where stations were extending coverage areas into unserved areas of a market.

- LMAs created viable outlets for the emerging networks UPN, PaxNet and WB, thereby increasing network competition locally and across the country

- LMAs lead to improved service by increasing the amount of news, public affairs and sports broadcasts that are available on free, over-the-air television.

- LMAs have directly resulted in improved facilities which benefit the public by improving service.

- LMAs have helped increase minority television ownership.

- Overall, the efficiencies associated with LMAs improve service and create more jobs in the television industry.

By any measure, these arrangements have improved service to American consumers. They have increased the quality and diversity of programming that is available, especially in small television markets. They have provided additional competition to the major national networks by providing important outlets for the new emerging networks. By making stations more competitive, the number of advertising outlets available for local regional and national advertisers has increased. They have also provided new opportunities for minority ownership. In sum, local marketing agreements have served the public interest.

The responses to the FCC's *Public Notice* provide important evidence for the FCC's multiple ownership proceeding. First, they confirm the Congress's observation made in the 1996 Telecommunications Act statement that existing LMAs serve the public interest. There should be no doubt that permanently grandfathering these arrangements will yield significant benefits to the public. Equally important is the fact that these combinations serve as a "laboratory" test, providing the FCC with valuable insight as to how the industry would perform in the absence of the local television duopoly rule. In this regard, there is no question that over-the-air television service would improve.

B. Diversity and Local Marketing Agreements

This *Supplemental Report* comes at a critical juncture in the Commission's deliberations about its local television ownership rules. The solid performance of the existing local marketing agreements should be viewed in the context of the goals that underpin the FCC's television duopoly rule. In fact, the FCC's concern over local marketing agreements is premised on the notion that LMAs somehow undermine of these rules.

The FCC's duopoly rule presumes that an industry comprised of separate local owners promotes diversity by creating independent "antagonistic" owners in local markets. It assumes that an independent, "antagonistic" ownership structure will ultimately create a diverse marketplace of ideas with respect to programming and editorial opinion broadcast over the air waves. It is worth remembering however, that the nexus between separate ownership in local markets and an increase in programming and viewpoint diversity is a *presumption,* not a hard fact.[2] In recent months, both the courts and some Commissioners have begun to question this presumptive nexus.

The LMA case studies presented herein call into question one key element of this presumption — the nexus between diverse programming and independent "antagonistic" ownership. In today's marketplace, federal regulations forcing an antagonistic, independently owned television broadcast structure in local markets do not foster diversity of opinion and programming in broadcasting.

To be fair, in the context of television broadcasting, a "one station per owner" local rule may have made sense in the 1960's. Given the limited number of media outlets existing at the time, such a rule did not appear to negatively impact the provision of news, public affairs and entertainment programming. Competitive incentives at that time did not conflict with the FCC's duopoly rule.

This is no longer the case. Local free, over-the-air television faces significant competition from a variety of multi-channel sources, including cable and DBS. In 1991 the FCC's Office of Plans and Policy observed consequences of this new competition:

> In the next ten years, broadcasters will face intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming expand their reach and their audience. Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component in the video mix, small market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of

[2]The FCC has never justified its ownership policies simply on the need to have a variety of different owners *per se.* The television ownership rules have always been based on the nexus between different owners and programming.

control over programming are no longer justified and may impede the provision of broadcast services.[3]

Today, the duopoly rule has created a local market industrial structure that in many markets is not producing at an optimally efficient level. To the contrary, in its search for diverse ownership under the television duopoly rule, the FCC has forced an ownership structure on the television broadcast industry that is inconsistent with today's economic reality. There is a disconnection between the economics of free, over- the- air broadcasting and FCC rules that perpetuate a "one station per owner" marketplace.

This "economic disconnect" undermines the very "diversity" goal the FCC seeks to advance through the television duopoly rule. To be sure, with rare exceptions, there is no common ownership of television stations in local markets. As the case studies presented *infra* demonstrate however, stations that are now part of local marketing arrangements were in economic peril prior to entering into the local marketing agreement. Some channels remained unbuilt for years. Other facilities were, at best, marginal operations. While "antagonistic" and independently owned, these voices were muted or silent, constrained by the economic reality. Their inability to contribute as truly viable speakers in the local market calls into question the purported nexus between independent ownership and diversity of opinion as expressed through programming.

The issue confronting the FCC is best illustrated by the following example. Assume a local market with seven television stations. Is it better to require seven separate owners even though one or two of the stations may not be competitive in a local market? Pursuing such a policy may look good on paper, but in reality, two voices have been effectively silenced -- reduced to a whisper by economic reality. In this situation would it be better to have fewer than seven owners if it meant revitalizing the two non-competitive stations? From a diversity perspective doesn't it make more sense to have strong viable stations than to force a system of ownership that effectively limits the strength of two stations.[4]

The FCC should also examine the issue from the consumers point of view. In recent years the government has become concerned about creating "information haves" and "have nots." The presence of free, over-the-air television directly addresses this issue by providing service to

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[3]Setzer, Florence and Jonathan Levy, Federal Communications Commission Office of Plans and Policy, OPP Working Paper No. 26, *Broadcast Television in a Multichannel Marketplace*, June 1991 at vii.

[4]This is not to say that seven (or for that matter five) independent owners is the optimum number. In a perfect world, the optimum number of independent voices should be determined by the market forces in each local television market. At the very least, however, broadcasters should have the opportunity to follow the dictates of the marketplace and own more than one over-the-air channel in a local market.

all Americans, rich and poor urban and rural. Consumer access to free, over-the-air television broadcasting is a critically important issue, especially in an era of increasing cable rates.

Referring to the example presented above, is a consumer better off with a system of seven independently owned stations, if two of the stations are weak economically and provide little or no service? To the contrary, consumers are better off with seven, viable, free, over-the-air television choices, even though there are less than seven owners. Indeed, if the FCC is truly concerned about keeping a free, universal video service, then it would give top priority to promoting ownership policies that create economically viable units.

Permitting local stations to harness local economies of scale to present additional news casts, public affairs programs, sporting events and top quality entertainment programs -- for free -- should be the most important public interest objective. At the core of the FCC's ownership policies is the goal that diverse ownership will lead to the broadcasting of diverse programming and opinions. It is the programming that conveys the thoughts and opinions so necessary to enhance the marketplace of ideas. But the marketplace of ideas is not enhanced, if in the name of a diverse ownership structure, a station lacks the economic vitality to present local news, public affairs and other programs. Continuing to impose an economically unsound industrial structure in local markets in the name of "ownership diversity" is simply counterproductive. In the long run, even the number of diverse owners will decline as firms leave the market and stations go off the air.

In summary, local marketing agreements have fostered the FCC's goal of promoting diversity in local markets. Absent these arrangements, many of these free, over-the-air video choices would simply not exist. The public interest and diversity enhancing contributions of these local marketing agreements should be considered by the FCC. The Commission can no longer rely on its traditional one owner per station presumption in light of proven programming performance and economic reality.

The *Supplemental Report* that follows is divided into two sections. The first section summarizes the overall public interest benefits resulting from existing local marketing agreements. The second section of the report is a compilation of the public interest statements filed by the local marketing agreement licensees in response to the FCC's *Public Notice*.

II. Performance of Local Marketing Agreements: A Summary

One of the key questions answered by the responses to the FCC's *Public Notice* is how many local LMAs exist today. Looking strictly at arrangements between stations located in either the same DMA or those having overlapping Grade B signals, we have isolated approximately 78 local LMA combinations. Nonetheless, this may be a slight overestimation of the actual number of operational LMAs that could be subject to a change in the FCC's rules. This number includes LMAs that would not necessarily be affected by a change in the FCC's rules. For example some of the responses involved LMAs with low powered stations, which do not trigger the FCC's duopoly rule. Other situations involve full powered stations located in the same DMA, but with no Grade B overlap.

For the purposes of the performance analysis presented below, we have focused on 68 operational LMAs. Because the primary focus of our investigation is to examine the public interest performance of local combinations, we have excluded so called "out of market" management arrangements. We have included time brokerage arrangements between stations that are either located within the same DMA and/or have overlapping Grade B contours. Also, since we are examining the actual performance of these combinations, we have excluded those LMA arrangements where one of the stations is either not yet on the air or where the programming agreement is not in effect.[5] We have not included local marketing agreements that are used primarily as transfer mechanisms. Our objective is to examine local marketing agreements that operate on a daily basis. These arrangements will provide the best insight as to how local market combinations will perform if the rules are changed.

Finally, we recognize there have been some marketplace changes since the responses were filed to the *Public Notice* last summer. Rather than attempting to track potentially numerous ownership changes that may have occurred to some stations, we have used the responses as a snapshot of the public interest benefits that can be achieved through LMA combinations. We believe this is a valid method of assessing the performance of the local combination. In this regard, the issue is not necessarily who owns the station *per se*. The issue is not whether corporation *X, Y or Z* has entered into a local marketing agreement. The Commission's rules apply to all entities. The key issue is whether local combinations such as LMAs create economic incentives that will improve overall service to the community. Using the responses to the FCC's *Public Notice* provides an ample snapshot of this process at work.

A. Market Size

In our earlier *Report* we observed that local marketing agreements could be found in all market sizes. Nonetheless, a significant number of LMAs were found in small to medium markets. Responses to the FCC's *Public Notice* confirm this analysis. Because we are simply examining where local marketing agreements exist, we are not focusing only on those that are operational. It is still relevant to determine where these arrangements exist, even though some of

[5]For example, the LMAs involving KMSS and KSHV (Shreveport, LA) and KWKT and KAKW (Waco TX) are described as "back up" LMAs and do not appear to be operational. Similarly, we have isolated five local marketing agreements where, according to the response, at least one of the stations is not yet on the air.